

# **EXHIBIT M**

## SUPPLEMENTARY GENERAL CONDITIONS PART I

### 1. CONTRACT DOCUMENTS

#### GENERAL

1. A.I.A. Document A201, 1997 edition, constitutes the General Conditions of the Contract for Construction for this project.
2. Articles of the A.I.A. General Conditions, listed under this Section, "Supplementary General Conditions", are amended by adding, substituting or omitting material as indicated herein.
3. The amended General Conditions of this Contract for Construction are a part of the Contract Documents and shall be read in conjunction with:
  - A. Invitation and Instructions to Bidders
  - B. General Conditions
  - C. Supplementary General Conditions, Part I and Part II
  - D. Special Conditions
  - E. Divisions 0 and 1 General Requirements of the Specifications

The following Articles known as the SUPPLEMENTARY GENERAL CONDITIONS shall modify and/or amend designated Articles of the AIA Document No. A-201, 1997 edition. Where such Articles of the AIA GENERAL CONDITIONS are inconsistent or ambiguous when read in conjunction with the SUPPLEMENTARY GENERAL CONDITIONS, the SUPPLEMENTARY GENERAL CONDITIONS shall govern. Where any Article of the GENERAL CONDITIONS is modified or any paragraph, subparagraph, or any clause thereof is modified or deleted by these SUPPLEMENTARY CONDITIONS, the unaltered provisions of the Article, paragraph, subparagraph, or clause shall remain in effect. This Contract is subject to all applicable Federal and state laws and where requirements contained herein do not conform to such statutes governing the construction of this Contract, the laws shall govern.

### 1.1 DEFINITIONS

- 1.1.1 In the first line, before the word "Conditions," insert the words, "Performance Bond, Payment Bond, Vote of Corporation., Invitation and Instruction to Bidders."  
In the third sentence delete the words "Unless specifically enumerated in the Agreement," and the word "not".

Add the following new paragraphs after 1.1.7:

#### 1.1.8 THE SITE

The word "site" shall mean the project site, the parameters of which are indicated on the Contract Drawings.

#### 1.1.9 GOVERNING LAWS AND BUILDING CODE

The term "governing laws and building code," wherever used, shall mean all laws, ordinances, rules, regulations, and lawful orders of any public authority, federal, state, or local bearing on the performance of the Work and the building code or codes legally applicable to work.

### 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

- 1.2.1 Add the following new sentence after the first sentence:

"A copy of the signed set shall be deposited with the architect."

- 1.2.2 Delete the period at the end of Paragraph 1.2.2 and add the following:

"...except as otherwise required by law. The General Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the work of the mechanical, electrical, and other specialized trades, and to all of the sections of the Specifications, and shall perform all Work reasonably inferable therefrom as being necessary to produce the indicated results."

- 1.2.3 Add the following at the end of paragraph 1.2.3:

"All work mentioned or indicated in the contract documents shall be performed by the contractor as part of this contract unless it is specifically indicated in the contract documents that such work is to be done by others. Should the drawings or specifications disagree in themselves or with each other the contractor shall provide the better quality or greater quantity of work unless otherwise directed by written addendum to the contract. The contractor and all subcontractors shall refer to all of the drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the sections of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results."

Add the following new paragraphs after Paragraph 1.2.3:

- 1.2.4 Where codes, standards, requirements and publications of public and private body are referred to in the specifications, references shall be understood to be the latest revision prior to the date of receiving bids, except as otherwise indicated.
- 1.2.4.1 The contractor warrants and represents that the contractor is familiar with, understands, and will implement the requirements of the Architectural Access Board with regard to all handicapped access issues and will comply with the Federal ADA requirements for this project. If the contractor fails to comply with either the state Architectural Access Board standards and/or the Federal ADA standards, any remedial work that is necessary to correct said deficiencies shall be paid for by the contractor solely and not by the owner.
- 1.2.5 Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of good quality for the intended use and consistent with the quality of the surrounding work and of the construction of the project generally.
- 1.2.6 The mechanical, electrical and fire protection drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such work. Such work shall be installed without additional cost to the owner to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Prior to beginning such work, the contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the mechanical, electrical and fire protection and installations in demonstrating to the contractor's satisfaction that the installation will comply with the preceding sentence.
- 1.2.7 The DRAWINGS and SPECIFICATIONS are intended to supplement one another. Materials and workmanship described are not necessarily found in both. Drawings are not intended to be scaled or to act as shop drawings. Inadvertent discrepancies or omissions shown on one drawing but not on others shall not be cause for additional charges or claims. In case of discrepancies, figured dimensions shall take precedence over smaller scale drawings. Specifications shall take precedence over Drawings for quality of materials and general performance of the work.
- 1.2.8 Whenever an item is specified and/or shown on the Drawings by details or reference, it shall be considered typical for other items which are obviously intended to be the same even though not so designated or specifically named but do serve the same function for this project.
- 1.2.9 Where the terms "necessary," "as directed," "when directed," "satisfactory," "good and sufficient," "approved," or other general qualifying terms are used on the Drawings, they are deemed to be followed by the words "in the opinion of the Architect" or "by the Architect" as the case may be.
- 1.2.10 The terms "approval," "approved," "approved equal," "or equal," or "other approved" mean as approved by the Architect.
- 1.2.11 Where reference is made to ASTM Specifications, it shall mean the standard specifications of the American Society for Testing and Materials of the most recent designation.

- 1.2.12 Similarly, where reference is made to Specifications, Standards or requirements of A.S.M.E. or A.S.H. & V.E., they shall mean respectively those of the American Society for Mechanical Engineers and the American Society for Heating and Ventilating Engineers, and shall be from the latest editions.
- 1.2.13 Any material specified by reference to the number, symbol, or title of a specific standard, such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date indicated on the specifications, except as limited, or modified in such reference.
- 1.2.14 The standards referred to, except as modified in the CONTRACT DOCUMENTS, shall have full force and effect as though printed in the CONTRACT DOCUMENTS. These standards are not furnished to the Contractor for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contractor shall make himself aware of the contents of such documents and furnish the field office with one full set of each.
- 1.2.15 Where codes, requirements, and publications of public and private bodies are referred to in the CONTRACT DOCUMENTS, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.
- 1.2.16 The Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show the exact physical locations or configurations of Work. Such work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact location of fixtures and outlets shall be obtained from the Architect as provided in Subparagraph 4.2.11, 3.2.4, and 3.2.5 before the Work is roughed in; work installed without such information from the Architect shall be relocated at the General Contractor's expense.
- 1.5 Execution of contract documents. Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified.

Add the following to subparagraph 1.5.2:

"The Contractor shall thoroughly acquaint himself with all the existing conditions at the site and shall take all such conditions into consideration as they may affect the work under his Contract. No allowance will be made in the Contract or the Work under the Contract for failure of the Contractor to visit the site."

- 1.5.2 Delete the word 'generally' in line 2.

Add the following paragraphs after Paragraph 1.5.2:

- 1.5.2.1 Test boring or soil test information or environmental site assessment reports included with the Contract Documents or otherwise made available to the Contractor were obtained by the owner for use by the Architect in the design of the Project or Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed.
- 1.5.4 Errors, conflict, or omissions, found in the CONTRACT DOCUMENTS, after award of the Contract, shall be brought to the Architect's attention, immediately, for classification, before proceeding with the work. The Architect's decision shall be made as stipulated in Article 4.
- 1.5.5 Should the work proceed, after the discovery of errors, conflict, or omissions by the Architect and clarification has not been received from the Architect, the Contractor will be held fully responsible for replacement or correction of the affected area, as directed by the Architect, at the Contractor's expense.
- 1.5.6 Before ordering any material or doing any work, each trade shall verify all measurements at this project and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on the Drawings, any difference which may be found shall be submitted to the Architect for consideration before proceeding with the work.
- 1.5.7 Where no explicit quality or standards for materials or workmanship are established for work, such work is

to be of good quality and comparable with the surrounding work and of the construction of the Project generally.

- 1.5.8 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

2. OWNER

2.1 GENERAL

Add the following new subparagraphs:

- 2.1.1 Delete in second sentence: "who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization."
- 2.1.1.1 Wherever the word Owner or a pronoun in place of it occurs in the Specifications it refers to the Town of North Brookfield or its (their) duly authorized representative.
- 2.1.1.2 Refer to Special Conditions for Construction Management Services to be provided by the Architect.
- 2.1.2 Delete
- 2.2.1 Delete
- 2.2.3 In the first line insert the word "available" after the word "furnish". Delete all text after the word "owner" in line 3 and insert the following: "except to the extent that the Contractor's review thereof reveals, or in the exercise of reasonable diligence should have revealed, any inaccuracy or incompleteness therein. The Contractor shall exercise proper precautions relating to the safe performance of the Work."

Change Paragraph 2.2.4 to read as follows:

- 2.2.4 Information or services required of the owner hereunder shall be furnished by the owner with reasonable promptness after receipt from the contractor of written request for such information or services.

Delete Paragraph 2.2.5 and substitute the following:

- 2.2.5 The Owner will furnish the General Contractor, without charge, ten (10) complete sets of CONTRACT DOCUMENTS, including Drawings, for his own use and that of his Subcontractors. Ten copies of any supplementary drawings will be furnished by the Owner. Additional sets or prints will be furnished upon request at the cost of reproduction and incidental expenses thereto.
- 2.3.1 The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the Owner. If such stoppage is required through no fault of the Contractor, the Contract Time (and the dates for achieving Substantial Completion and Final Completion) shall be extended by a period equal to the period of the stoppage, and the Contractor shall be compensated for its reasonable and justifiable costs incurred as a result of such stoppage.
- 2.4.1 Delete the first and second sentences and substitute the following:

"If the contractor defaults or neglects to carry out the work in accordance with the contract documents and fails within a seven day period after receipt of written notice from the owner to begin and prosecute correction of such default and neglect with diligence and promptness the owner may, without prejudice to other remedies the owner may have, correct such deficiencies."

In the third sentence replace the words "Change Order" with the words "Construction Change Directive".

Delete the fourth sentence.

3. Contractor

- 3.1.4 **Contractor's Financial Condition.** The Contractor represents and warrants that its financial condition is sound and that the Contractor is capable of performing the work required pursuant to the Contract Documents. Upon request by the Owner, the Contractor shall make available to the owner such audited and unaudited financial statements of the Contractor as the Owner may reasonably request. The Contractor shall promptly advise the Owner of any occurrence, event, fact, or other matter that has had, will have, or might reasonably be predicted to have a material adverse effect upon the financial condition of the Contractor.

Change Paragraph 3.2.1 to read as follows:

- 3.2.1 Before starting the work and at frequent intervals during the progress thereof, the contractor shall carefully study and compare the contract documents with each other and with the information furnished by the owner pursuant to subparagraph 2.2.2 and shall at once report to the architect any error, inconsistency or omission the contractor may discover. Any necessary change shall be ordered as provided in article seven, subject to the requirements of paragraph 1.2 and other provisions of the contract documents. If the contractor proceeds with the work without such notice to the architect, having discovered such errors, inconsistency or omissions, or if by reasonable study of the contract documents the contractor could have discovered such, the contractor shall bear all costs arising therefrom.

- 3.2.3 Delete the third sentence

Add the following subparagraphs:

- 3.2.4 The contractor shall give the architect timely notice of any additional drawings, specifications, or instruction required to define the work in greater detail, or to permit the proper progress of the work.
- 3.2.5 The contractor shall not proceed with any work not clearly and consistently defined in detail in the contract documents, but shall request additional drawings or instructions from the architect as provided in subparagraph 3.2.4. If the contractor proceeds with such work without obtaining further drawings, specifications, or instructions, the contractor shall correct work incorrectly done at the contractor's own expense.
- 3.2.6 Any claim by the Contractor or Subcontractors that, in submitting their respective bids, they did not include all items as shown in the Contract Documents, will be given no consideration for an adjustment of any kind. If any item is specified in a Section which would not normally furnish this item it shall be the responsibility of the Contractor to coordinate the situation with the Subcontractor, and if the item under consideration is not to be provided by the Subcontractor it shall be the responsibility of the Contractor to provide the work in question, without any additional cost to the Owner.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 Delete the last ten words of this subparagraph and add the following:

"Where the contract documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the work, such mention is intended only to indicate that the operations of the contractors shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the work shall be the responsibility of the contractor, who shall notify the architect in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the work, if these differ from those mentioned in the contract documents, which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be born by the contractor notwithstanding that such construction means, methods, techniques, sequences, or procedures are referred to, indicated or implied by the contract documents, unless the contractor has given timely notice to the owner and architect in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the owner has then instructed the contractor in writing to proceed at the owner's risk."

Change Paragraph 3.3.2 to read as follows:



- 3.3.2 The contractor shall be responsible to the owner for the acts and omissions of all entities or persons performing or supplying the work.

Add the following after 3.3.3:

- 3.3.4 Except as otherwise required by the Massachusetts General Laws, references in the Specifications or on the Drawings to specific products (materials, systems, equipment, accessories, etc.) Or methods of construction, names, makes, catalog numbers, or other means of identification shall limit the selection of the items to those types so identified. After the contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the following conditions and those set forth in the Special Conditions section of the Specifications:

1. The Contractor may propose a product or method which he reasonably feels is equal or better in quality and appearance to that specified and which if used, will result in a credit to the Owner.
2. The Contractor may propose a product or method to replace a specified product or method which he has reasonably determined to be not in conformance with requirements of governing laws and codes or which, for any other reason, is more appropriate for use in the project than that specified.
3. The Contractor may propose a product or method to replace a specified product or method which can be proven to be legitimately unavailable within the lead time provided.

Any such proposal shall include complete information sufficient to enable the Architect to properly evaluate the proposed substitution. Should additional information be requested by the Architect, it shall be promptly obtained and submitted by the Contractor. Acceptance or rejection of any proposed substitution shall be solely at the discretion of the Architect, except that the Architect shall timely notify the Owner prior to any such acceptance, and the Owner may, in its discretion, upon opportunity for full consideration of the proposal, prohibit such substitution.

#### 3.4 LABOR AND MATERIALS

- 3.4.1 Add the following sentence at the end of Paragraph 3.4.1:

"The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified."

Add the following new subparagraphs:

- 3.4.2.1 Not later than 10 days from the Contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each of the products so identified in the Specifications and, where applicable, the name of the installing Subcontractor.
- 3.4.2.2 The Architect will promptly reply in writing to the Contractor stating whether the Owner or the Architect, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements.
- 3.4.2.4 By making requests for substitutions, the Contractor:
- (a) Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  - (b) Represents that he will provide the same warranty for the substitution that he would for that specified;
  - (c) Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes the Architect's redesign costs, and waives all claims for additional cost related to the substitution which subsequently become apparent; and
  - (d) Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

3.5.1 Change the first sentence of Paragraph 3.5.1 to read as follows:

"The contractor warrants that the materials and equipment furnished under the contract will be new and of recent manufacture unless otherwise specified, and that all work will be of good quality, free from faults and defects, and in conformance with contract documents."

Delete the third sentence of Paragraph 3.5.1.

Add the following to the end of the second sentence of subparagraph 3.5.1: "and, promptly after written notification of non-conformance, shall be repaired or replaced by the Contractor with Work conforming to such requirements."

Add the following new paragraphs:

- 3.5.2 The contractor shall be responsible for determining that all materials furnished for the work meet all requirements of the contract documents. The architect may require the contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the architect, would lead to a reasonable certainty that any material used or proposed to be used, and the work meets the requirements of the contract documents all such data shall be furnished at the contractor's expense. This provision shall not require the contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the contract documents to be performed at the contractor's expense.
- 3.5.3 In all cases in which the manufacturer's name, trade name, or other proprietary designation is used in connection with materials or articles to be furnished under this contract, whether or not the phrase "or equal" is used after such name, the contractor shall furnish the product of the named manufacturers without substitution, unless a written request for substitution has been submitted by the contractor and approved in writing by the architect as provided in subparagraph 3.5.4.
- 3.5.4 If the contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the contract documents, the contractor shall inform the architect in writing of the nature of such deviation at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the contract documents.
- 3.5.5 In requesting approval of deviations and substitutions, the contractor shall provide, upon request, evidence leading to the reasonable certainty that the proposed substitution or deviation will provide a quality of results at least equal to that otherwise attainable. If, in the opinion of the architect, the evidence presented by the contractor does not provide a sufficient basis for such reasonable certainty, the architect may reject such substitution or deviation without further investigation.
- 3.5.6 The contract documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items and mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the project, as well as for their intrinsic merits. The architect will not approve as equal to material specified proposed substitutes which, in the architect's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character and quality of design of the project. In order to permit coordinated design of color and finishes the contractor shall, if required by the architect, furnish the substitute material in any color, finish, texture or pattern which would have been available from the manufacturer originally specified at no additional cost to the owner.
- 3.5.7 Any additional costs, or any loss or damage arising from the substitution of any material or any method or those originally specified shall be born by the contractor, notwithstanding approval or acceptance of such substitution by the owner or the architect, unless such substitution was made at the written request or direction of the owner or the architect.
- 3.5.8 The owner retains the authority of final decisions with respect to substitutions.
- 3.5.9 The warranty provided in this paragraph 3.5 shall be in addition to and not in limitation of any warranty required by the contract documents or otherwise described by law.



- 3.5.10 The contractor shall secure and deliver to the architect, no later than the date claimed by the contractor as the date of substantial completion, all special warranties required by the contract documents. Delivery by the contractor shall constitute the contractor's guarantee to the owner that the warranty will be performed in accordance with its terms and conditions.
- 3.5.11 The Contractor shall guarantee all Work for a period of one year after Date of Substantial Completion, or by the terms of any special guarantee required by the Contract Documents. The Contractor shall, upon written notice from the Owner, promptly correct defective Work or Work not in accordance with the Contract Documents.
- 3.6 Taxes
- Add the following new subparagraph:
- 3.6.2 The Owner is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Contractor's request, Tax Exemption Certificates will be furnished by the Owner to the Contractor with respect to such tax exempt articles as may be required under this Contract.
- 3.6.3 Compliance with Tax Laws. By executing the Contract Documents, the Contractor certifies under the pains and penalties of perjury pursuant to Chapter 62C, Section 49A(b) of the Massachusetts General Laws that the Contractor has complied with all of the laws of the Commonwealth of Massachusetts relating to taxes.
- 3.7.1.1 Add the following:
- The Contractor will secure and pay for the Building Permit. The Fee for the Building Permit and related Building inspector inspections is \$3000. The contractor is responsible for payment of the plumbing, gas, and electrical permits and related inspection fees. The costs for the plumbing and electrical permits are \$3,000 each. There is no local fee for the demolition permit; however, the Contractor is responsible for all other demolition permits and other fees related to demolition (e.g., tipping fees).**
- 3.7.3 Delete the first sentence of subparagraph 3.7.3 and delete the word "However" from the second sentence.
- 3.7.4 In the first sentence of 3.7.4 delete the word "knowing" and after the word "it" insert the words "knows or should know"
- 3.8 ALLOWANCES. Delete this paragraph in its entirety.
- 3.9 Change title to read "SUPERINTENDENTS"
- 3.9.1 Change the first sentence of paragraph 3.9.1 to read as follows:
- "The contractor shall employ a competent superintendent, reasonably acceptable to the owner, and necessary assistants who shall be in attendance at the project site full time during the progress of the work until the date of substantial completion, and for such additional time thereafter as the architect may have determined to be necessary for the expeditious completion of the work. The contractor shall remove the superintendent if requested to do so in writing by the owner, and shall promptly replace him with a competent person reasonably acceptable to the owner."**
- Add the following new paragraphs:
- 3.9.2 SUPERINTENDENT, ASSISTANT SUPERINTENDENT, AND CARPENTERS:
- The Contractor shall have a full-time superintendent on the job whose duties shall include coordination of all work including the work of all subcontractors, and he shall remain on the job until the final punchlist is complete and accepted by the Owner or until and to the extent the Owner determines the full-time superintendent is no longer needed for final completion and acceptance. In addition, the Contractor shall have a full-time assistant superintendent who shall assist the superintendent in the coordination of all construction work and who shall check with instruments all construction work for plumbness, levels, locations, points, alignment, and who shall assist the superintendent with administrative work. The**

Contractor shall install all rough and finish carpentry work in a good workmanlike manner with carpenters on his own payroll except for any finish carpentry work for which the Owner gives specific prior approval for (a) performance by a named subcontractor and (b) the terms of the subcontract, and shall at all times have a sufficient number of carpenters on his payroll to perform all such rough and finish carpentry work and a sufficient number of laborers on his own payroll to keep the entire construction site clean and free from obstacles hindering the performance of work.

- 3.9.3 The Contractor and each of the subcontractors shall furnish to both the Owner and the Architect the names, addresses, and telephone numbers of the superintendent and at least two other of the Contractor's authorized representatives indicating where they can be contacted at times other than normal working hours in case of emergency.
- 3.9.4 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials. The Contractor shall employ a competent project manager and scheduler whose duties shall include preparation and maintenance of the specified project schedules and attendance at scheduling meetings and other project meetings where the project schedule is part of the agenda.
- 3.9.5 The Contractor shall arrange for and attend job meetings with the Architect and such other persons as the Architect may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Architect. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.
- 3.10.1 At the end of this paragraph, add the following:
- "The progress schedule shall include an estimated cash flow schedule, showing anticipated monthly expenditures throughout the duration of the Contract based on the Schedule of Values required under ARTICLE 9, Paragraph 9.2 of these GENERAL CONDITIONS.
- 3.12 Shop Drawings, Product Data and Samples
- Add the following new clause to subparagraph 3.12.5:
- 3.12.5.1 Only those submittals listed in the Specifications will be reviewed by the Architect.
- Add the following new subparagraphs:
- 3.12.11 the Contractor shall Furnish copies of Shop Drawings and Product Data stamped and signed by the Contractor indicating clearly his complete approval and signifying that, to his knowledge, the Shop Drawings and Product Data do comply with all of the Contract Documents. Submittals not approved by the Contractor will be returned unreviewed and no claim of delay shall be allowed. No partial or incomplete submittals as defined herein will be accepted. Mechanical and Electrical Work submittals shall be submitted within sixty (60) days after award of Contract. ALL submittals shall be submitted in a timely manner with adequate lead time for resubmittals without jeopardizing approval or ordering dates as indicated on the shop drawing submittal schedule. No claim of delay shall be allowed for the Contractor's failure to schedule appropriate lead time for approval of shop drawings.
- 3.12.12 Shop Drawings and Product Data shall contain all data and information necessary to verify that the design, material, construction, apparatus, device, etc., complies in all respects with the requirements of the Drawings and Specifications. Catalog numbers only of manufacturers are not acceptable as sufficient information for compliance.
- 3.12.13 By approving and submitting shop drawings, product data, samples, and similar submittals the contractor thereby represents that the contractor has determined and verified all dimensions, qualities, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with

information on previously accepted shop drawings, product data, samples, or similar submittals and verification of compliance with all the requirements of the contract documents. The accuracy of all such information is the responsibility of the contractor. In reviewing shop drawings, product data, samples, or similar submittals the architect shall be entitled to rely upon the contractor's representation that such information is correct and accurate.

- 3.12.14 Contractor shall Furnish additional copies of reviewed Shop Drawings and Product Data for job use as required, stamped or otherwise designated as copies of reviewed submittals.
- 3.12.15 Contractor shall verify all field measurements at the building. Measurements available prior to submittal of Shop Drawings shall be shown and so noted on submittal. Measurements not available prior to submission of Shop Drawings and Product Data shall be so noted on submittal and obtained as soon as available, in all cases prior to fabrication.
- 3.12.16 contractor shall Submit samples of colors and finishes of factory finished products and of colors and finishes of job-applied products in duplicate and greater quantities where so indicated. Submit complete selection of color samples; partial submittals will not be accepted. Colors have been selected by the Architect. All colors submitted shall match colors selected. Submit all related colors and materials in one package (e.g. paint, carpet, base, wall covering, window treatment, etc, must be submitted together; roofing, brick, fascia/soffit, exterior sealant, etc. must be submitted together.
- 3.12.17 Shop drawings and Product Data shall include installation details for the project specific condition. As an example, a metal window submittal must include detail drawings on how it will be installed in the actual project wall, as well as all product and material information. Related materials and construction shall be shown and submitted together when review of one requires knowledge of another (e.g. submit roofing, insulation, copings, vent flashings, etc. together).
- 3.12.18 The use of reproductions of the contract documents as a shop drawing submittal will not be accepted and will be returned as rejected.

### 3.13 Use of Site

Add the following new subparagraph:

- 3.13.2 The Contractor shall provide adequately for use of and access to the premises as required by other Contractors.

### 3.14 Cutting and Patching

- 3.14.1 At the end of this paragraph, delete the period and add the following:

“, except as otherwise specified under the various SECTIONS of the SPECIFICATIONS.”

### 3.15 Cleaning Up

- 3.15.1 Add the following sentence after the first sentence: “Immediately prior to the architect’s inspection for substantial completion, the contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, sealed and waxed as specified, and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks, and smears, shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the contractor at the contractor’s expense.”

Change the last sentence to read: "At the completion of the Work and as a condition of Substantial Completion, the contractor shall remove all waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials, and shall clean all surfaces and leave the work "broom-clean" or its equivalent, unless more exactly specified herein and in other sections of these specifications."

### 3.18 INDEMNIFICATION

Change subparagraph 3.18.1 to read as follows:

- 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, pay-on-behalf of and hold harmless the Owner and, as a 3<sup>rd</sup> party beneficiary, the Architect, Architect's consultants, and the agents and employees of each from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or part by any negligent or wrongful act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this Paragraph 3.18.

#### 4. ADMINISTRATION OF THE CONTRACT

##### 4.1 ARCHITECT

Add the following at the end of Paragraph 4.1.1:

"Except for the special agreement in paragraph 3.18, nothing contained in the CONTRACT DOCUMENTS shall create any contractual relationship between the Architect and the Contractor. The Architect shall have no liability to the Contractor, Sub-contractors, suppliers, or their employees or agents on account of errors, inconsistencies, or omissions in the Contract Documents or on account of any act or failure of the Architect to act in connection with the administration of the Contract, provided that the decision of the Architect to act or not act is made in good faith as the Owner's representative."

Add the following new subparagraphs:

- 4.1.1.2 Wherever the word Architect or Architects or a pronoun in place of them occurs in the Specifications it refers to DORE and WHITTIER, INC., 1795 Williston Road, South Burlington, Vermont 05403, or their duly authorized representative.
- 4.1.2 In the first sentence of subparagraph 4.1.2 delete the word "Contractor".
- 4.1.3 Delete this subparagraph in its entirety.
- 4.1.1.3 The Architect will have a full-time on-site representative to provide Construction Management services as outlined in the Special Conditions section of these Specifications. These services by the Architect do not relieve the Contractor of Contractor responsibilities established by the Contract Documents.
- 4.2.11 The parties agree that the Architect's duties under this subparagraph shall be governed by Chapter 30, Section 39P of the General Laws of the Commonwealth of Massachusetts, as amended.
- 4.2.12 Delete the second sentence.
- 4.3 CLAIMS AND DISPUTES
- 4.3.2 Delete all but the second sentence of subparagraph 4.3.2.
- 4.3.4 Delete the text of subparagraph 4.3.4 and substitute the following: "Claims for concealed or unknown conditions shall be governed by Chapter 30, Section 39N of the General Laws of the Commonwealth of Massachusetts, as amended."
- 4.3.5 Add the Following: "Contractor must have prior written authorization from Owner for additional cost, otherwise Owner is not responsible to pay."
- 4.3.7.2 Delete subparagraph 4.3.7.2.

Add new sub paragraph 4.3.7.3 as follows:

- 4.3.7.3 If the contractor claims that any acts or omissions of the owner or architect, including any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and the contractor has not received a written acknowledgement by the owner or architect that an extra will be made or time extended on account thereof, the contractor shall promptly so notify the architect in writing of such claim within five business days of the occurrence and shall not proceed with the work relating to such claim until the contractor has received a further written order to proceed in accordance with paragraph 4.4 except as provided in paragraph 10.3, in the case of an emergency affecting life or property. No claim by the contractor on account of such acts, omissions, instructions, or orders shall be valid unless the contractor has so notified the architect, before proceeding, and has received the further written order to proceed.

- 4.3.10 Claims and Consequential Damages:

Replace with the following:

"The Contractor waives claims against the Owner for consequential damages arising out of, or related to, this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work."

"This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14.

- 4.4.5 Revise the second sentence of subparagraph 4.4.5 to read: The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to final dispute resolution in accordance with the terms of this Contract.

Add the following sentence to the end of subparagraph 4.4.5:

The provisions of this paragraph 4.4 shall not prevent the parties from pursuing such other remedies as may be available at law if they are not satisfied with the Architect's decision.

- 4.4.8 Delete the text after the word "Architect" in line 2.

- 4.5. MEDIATION and 4.6 ARBITRATION. Delete these paragraphs and all their subparagraphs in their entirety and insert the following:

4.5. The parties may pursue claims in a court of competent jurisdiction and subject to the requirements of the Contract Documents. The use of any other or alternative means of dispute resolution, including mediation and arbitration, shall require the consent of both parties."

## 5. SUBCONTRACTORS

- 5.2.1 Delete the last sentence of subparagraph 5.2.1.

- 5.2.2 Insert the following after the words "made reasonable" in the second sentence: "and legally permissible".

- 5.2.3 Delete sentence two and three of sub-paragraph 5.2.3

ADD the following new paragraphs:

- 5.2.5 The provisions of Subparagraph 5.2.1 through 5.2.4 shall not apply to the designated filed Sub-Bidders under this Contract. Such Subcontracts shall be in accordance with Chapter 149, Sections 44A through 44I inclusive of the General Laws of Massachusetts as amended.

- 5.2.6 The subcontract for Filed Sub-Bidders shall be the FORM FOR SUBCONTRACT annexed hereto, or, if not published with these specifications, it shall be the form and language established by Chapter 149 of Massachusetts General Law.

## 5.3 SUBCONTRACTUAL RELATIONS



Add the following new subparagraph 5.3.2:

- 5.3.2 If such separate contractor sues or initiates an arbitration proceeding against the owner on account of any damage alleged to have been caused by the contractor, the owner shall notify the contractor, who shall defend such proceedings at the owner's expense, and if any judgment or award against the owner arises therefrom the contractor shall pay or satisfy it and shall reimburse the owner for all attorneys' fees and court or arbitration cost which the owner has incurred.

- 5.4.2 DELETE this subparagraph in its entirety.

6. WORK BY OWNER OR BY SEPARATE CONTRACTORS

- 6.1.1 In sentence one of subparagraph 6.1.1 delete the following: "including those portions related to insurance and waiver of subrogation"

- 6.1.4 Delete subparagraph 6.1.4 in its entirety.

- 6.2.5 Delete subparagraph 6.2.5 in its entirety.

- 6.2.3 Delete last sentence.

7. CHANGES IN THE WORK

Add the following new paragraphs after 7.1.3.

- 7.1.4 Upon the request of the owner or the architect, the contractor shall without cost to the owner submit to the architect, in such form as the architect may require, an accurate written estimate of the cost of any proposed extra work or change. The estimate shall indicate the quantity in unit cost of each item of materials, and the numbers of hours of work and an hourly rate for each class of labor, as well as the description in amounts of all other costs chargeable under the terms of this article. Unit labor costs for the installation of each item of materials shall be shown if required by the architect. The contractor shall promptly revise and resubmit such estimate if the architect determines that it is not in compliance with the requirements of this article, or that it contains errors of fact or mathematical errors. If required by the architect in order to establish the exact costs of the new work added or of previously required work omitted, the contractor shall obtain and furnish to the architect bonafide proposals from recognized suppliers for furnishing any material included in such work. Such estimates shall be furnished promptly so as to occasion no delay in the work and be furnished at the contractor's expense. The contractor shall state in the estimate any extension of time required for the completion of the work if the change or extra work is ordered.

- 7.1.5 Where the value of work performed directly by the Contractor under a Change Order or a Construction Change Directive is determined by either a lump sum proposal or by the actual cost of work as it progresses, the Contractor will be allowed an additional amount of ten percent (10%) of the total cost of material and labor, as combined overhead, superintendence, and profit. Cost of the work shall include the cost at prevailing rates for direct labor, material and use of equipment, plus the cost of workmen's compensation insurance, liability insurance, federal social security and Massachusetts unemployment compensation. Mark-up for overhead, superintendence and profit shall include (and no additional payment shall be made for) general conditions, management, supervision, coordination, insurance, bonds, mobilization, record drawings, engineering/layout, small tools/computers, "tools of the trade", transit, staging/scaffolding, lifting, hoisting, dumpster, handling, clean-up, temporary weather protection, temporary heat and utilities, shipping/receiving, administration, accounting, punch list, O & M manuals, estimator time, schedule updating, safety protection, certified payrolls, street sweeping, police, barricades, signs, construction fences, and the like. Surcharges for subcontracted work, where required or permitted, shall be as follows:

1. To the subcontractor or sub-subcontractor performing the work, ten percent (10%) of the total cost of labor and materials.
2. To payments made to a sub-subcontractor, the subcontractor will be allowed an additional five percent (5%).



3. To the total payment made to the subcontractor, the Contractor will be allowed an additional five percent (5%) to cover increased overhead and profit.

4. No additional costs will be allowed for any lower tier of subcontractors.

7.1.5.1 If deductions are ordered, the credit shall be computed at net cost.

7.1.5.2 The General Contractor shall not sublet any work under a Change Order or a Construction Change Directive unless work under the basic Contract of a similar type was previously subcontracted; and Subcontractors will not be allowed to further sublet any work under a Change Order unless work under the basic Contract of a similar type was previously sublet by them, without the written approval and acceptance of the Owner.

7.1.5.3 All changes in the Work shall be in accordance with provisions of the General Law, Chapter 30, Section 39I.

7.2.2 Revise subparagraph 7.2.2 to read as follows:  
"Unless otherwise provided in the Contract Documents, methods used in determining adjustments to the Contract Sum shall include those listed in subparagraph 7.3.3."

7.3.8 Delete the second and third sentences.

## 8. TIME

Add the following paragraph after 8.1.4:

8.1.5 The term "working day" shall mean any calendar day except Saturdays, Sundays, and legal holidays at the place of the building.

## 8.3 DELAYS AND EXTENSION OF TIME

8.3.1 change the phrase "other causes beyond the Contractor's control" in line 3 to read "other causes (except weather) beyond the Contractor's control".

8.3.3 Delete sub-paragraph 8.3.3 in its entirety.

Add new sub-paragraphs 8.3.4 and 8.3.5 as follows:

8.3.4 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Architect on account of any delay in the commencement of the work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Architect, or otherwise, except as and to the extent expressly provided under statute. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

8.3.5 No extension of time shall be granted because of seasonal or normal variations in temperature, humidity or precipitation which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. Any additional cost of operations or conditions resulting therefrom shall be the responsibility of the Contractor.

## 9. PAYMENTS AND COMPLETION

Insert the following paragraph:

9.0 The provisions of Article 9 are modified by the requirements set forth in M.G.L. Chapter 30, Sections 39F and 39K.

- 9.2.1 Add the following at the end of the first sentence: "and shall be revised if later found by the architect to be inaccurate."

After Paragraph 9.2.1, add the following paragraphs:

9.2.2 SCHEDULE OF VALUES:

- A. Submit typewritten Schedule of Values on 8 ½ by 11 inch white paper.
- B. Use Table of Contents of the Project Manual as basis for format for listing costs of work for SECTIONS under DIVISION 2 through 16, and identify each line item with number and title of SECTION.

9.2.3 BASIC REQUIREMENTS FOR SCHEDULE OF VALUES:

- A. Submit to the Architect two copies of the Schedule of Values within 10 days of receipt of notice to proceed.
- B. Upon request by the Architect, support values given with data that will substantiate their correctness.
- C. Submit quantities of designated materials for materials stored on which payment is expected to be made.
- D. Use Schedule of Values only as basis for Contractor's Application for Payment.

9.2.4 PREPARATION OF SCHEDULE OF VALUES:

- A. Itemize separate line item cost for each of the following general cost items:
  - (1) Performance and Payment Bonds.
  - (2) Field Supervision and Layout.
  - (3) Temporary Construction Facilities and Controls.
  - (4) The value for preparing the initial Schedule of Values shall be \$5,000.
  - (5) The value for preparing the initial Contractor's Construction Schedule (per General Conditions 3.10 and Section 01310) shall be \$10,000.
  - (6) The value for preparing monthly updates of the Contractor's Construction Schedule shall be \$1,000 per month.
- B. Itemize separate line item cost for work required by each SECTION of the Specifications. SECTIONS shall be further subdivided into separate line items under each SECTION as required by the Architect.
  - (1) Provide further breakdown by phase.
- C. Break down installed costs into:
  - (1) Delivered cost of product.
  - (2) Total installed cost, with overhead and profit.
- D. The Owner is tax exempt for all materials incorporated into the construction.
- E. For each line item which has installed value of more than \$20,000, break down costs to list major products or operations under each item.
- F. Make sum of total costs of all items listed in Schedule equal to total Contract Sum.
- G. After review by Architect, revise and resubmit Schedules as required. Resubmit revised schedules in same manner.

9.2.5 SCHEDULE INFORMATION REQUIRED:

- A. In preparing the Schedule, identify each subdivision or classification of the Work by code number

referring to each individual SECTION (or sub section where applicable) of the Specifications.

B. Attach to the Schedule of Values a list of the names, addresses (and whether individual, partnership or corporation) of each Subcontractor or Sub-Subcontractor who is to perform all or any part of each subdivision. In the event any Subcontractors, or Sub-Subcontractors are not known at the time said Schedule is prepared, submit to the Architect an amended or supplementary list containing the names of the Subcontractors and Sub-Subcontractors involved and indicating their SECTION of the Work, as soon as the information is available. Code numbers, for identification on requisitions, to identify the Contractor, each of the Subcontractors and Sub-Subcontractors, and indicate in each requisition where any part of the Work performed by the Contractor, Subcontractor, Sub-Subcontractors, or material men is incorporated in the amount of the requisition for which payment is requested.

C. The Schedule shall be arranged in vertical columns identified by title, including Names of Items; Original Amounts, Percent Completed to Date; Previous Payments; Current Requests; and Balance Not Yet Requested. A summary of the total amount due to date and the amount of the five percent retained shall be included in the Statement which shall be signed by the General Contractor. A separate sheet shall be included with each requisition, showing status of work covered by approved Change Orders. The General Contractor shall submit to the Owner such schedules of quantities and costs, progress schedules, payrolls, reports estimates, records, and other data as the Owner may request concerning work performed or to be performed under this Contract.

9.2.6 Submit to the Architect for transmittal to the Owner, such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Architect may request concerning work performed or to be performed under this Contract.

9.3 Applications for Payment

9.3.1 Delete the first twelve words and substitute the following: "At the time or times established in the agreement." Insert the following new sentence after the first sentence: "The format and number of copies of such applications for payment shall be as directed by the architect."

9.3.1.1 Delete this subparagraph.

Add the following new subparagraph:

9.3.1.3 Until Substantial Completion of the entire project, the Owner will pay ninety five percent (95%) of the amount due the Contractor on account of progress payments. This retainage of 5%, less any amounts due from the Contractor for Liquidated Damages and applicable costs of the Clerk and Architect and Architect's Consultants, will be paid within thirty (30) days after the acceptance of the work by the Owner.

Add the following subparagraph after 9.3.3:

9.3.4 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a certificate signed by each Subcontractor under pains and penalties of perjury stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Architect. Such waiver or certificate shall be in a form acceptable to the Owner. The contractor warrants that title to all work covered by an application for payment will pass to the owner either by incorporation into the construction or upon the receipt of payment by the contractor, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to in this article as "liens." The contractor further agrees that the submission of any application for payment shall conclusively be deemed to waive all liens with respect to work to which the contractor may then be entitled, provided that such waiver of the lien rights shall not waive the contractor's right to payment for such work.

After this paragraph, add the following paragraphs:

9.3.5 The Contractor, his Subcontractors and Sub-subcontractors shall obtain prior written approval from the

Owner through the Architect for permission to store materials to be incorporated in the Work, for which Progress Payments will be requested, at off-site locations. Any and all charges for storage, including insurance, shall be borne solely by the General Contractor. Before approval, the Owner will require proper proof of insurance and a letter in which is furnished:

- 1 The name of the General Contractor and/or the Subcontractor or Sub-subcontractor leasing the storage area.
- 2 The location of such leased space.
- 3 The leased area: the entire premises or certain areas of a warehouse giving the number of floors or portions thereof.
- 4 The date on which the material is first stored.
- 5 The value of the material stored.

- 9.3.6 The General Contractor, his Subcontractors and Sub-subcontractors shall notify the Architect and the Owner to inspect, at least once each month, the materials being stored at any location.
- 9.3.7 The General Contractor, his Subcontractors and Sub-subcontractors shall mark each sealed carton with the name of the Project and the Architect.
- 9.3.8 A perpetual inventory shall be maintained for all materials held in storage for which payment has been requested.
- 9.3.9 Payment for materials stored off site shall be at the sole discretion of the Owner. Any additional costs to the Owner resulting from storage of material off site for which payment is requested, such as, but not limited to, travel expenses and time for inspectors, shall be back charged to, and paid by, the General Contractor.
- 9.5.1 Add the following new sub sub paragraph:
- .8 failure of mechanical trade or electrical trade subcontractor to comply with mandatory requirements for maintaining record drawings. The contractor shall check record drawings each month. Written confirmation that the record drawings are current will be required by the architect before approval of the contractor's monthly payment requisition.
- 9.6 Progress Payment
- 9.6.3 Delete this subparagraph in its entirety.
- 9.6.5 Delete this subparagraph.
- 9.6.7 Delete this subparagraph
- Add the following new subparagraphs:
- 9.6.8 For Applications for Payment submitted on or before the 1st of the month, the Owner will make progress payments 15 days later to the Contractor on the basis of approved application for payment for work and materials incorporated and materials suitably stored on or off the site by the Contractor, less five percent (5%) throughout the entire Contract.
- 9.6.9 Upon Substantial Completion, the Owner shall approve and pay promptly the remaining contract amount less two times the value of any items still to be completed, plus an amount necessary to satisfy outstanding claims, liens, and judgments, if applicable.
- 9.6.10 No partial payment will be made after the time fixed for Substantial Completion of the Work or the time to which completion may be extended under the terms of the Contract until the full and final completion and acceptance of the Work.
- 9.6.11 Each application for payment must be accompanied by a payment affidavit, Form AIA G706 unless directed otherwise, properly sworn to and signed by a responsible officer of the Contractor's firm, stating that all bills for materials and all wages for work performed upon the work of the Contract have been paid in full.

9.7 Failure of Payment

Delete paragraph 9.7.1. in its entirety.

9.8 Substantial Completion:

9.8.1 Add the following at the end of the sentence: "and only minor items which can be corrected or completed without any material interference with the owner's use of the work remain to be corrected or completed."

9.8.1.1 Contractor shall submit, prior to requesting substantial completion, written certification that:

- a. Equipment and systems have been tested in the presence of the Owner's Representative and are operational.
- b. Owner's designated staff have been instructed on all equipment and systems and an Owner signed receipt has been furnished to the Architect.
- c. Operational and Maintenance Manuals have been submitted to and reviewed by the Architect.
- d. Owner has received the specified guarantees and spare parts and the Owner has signed a receipt for same.
- e. Project has been completed and is ready for final inspection and an appropriate Certificate of Occupancy has been issued.

9.8.2 Add the following after 9.8.2:

9.8.2.1 PUNCH LIST MANAGEMENT

Prior to substantial completion, the Contractor shall develop a list of work to be completed or corrected by room and trade. Post individual items in a visible location in every room for trade sign off of completed items. The punch list is to be compiled and in a process of active completion at the time of Substantial Completion, prior to the de-mobilization of major sub-contractors. Amend the punch list with owner furnished items during the 60 day period prior to Final Completion. Submit the punch list to the Architect for amendment. Indicate completion dates of items, and submit completed list prior to final release of retainage.

9.8.5 Delete this subparagraph and substitute the following: "The Certificate of Substantial Completion shall be submitted to the Owner and Contractor by the Architect. The certificate shall state the date of substantial completion, shall state any consequent responsibilities of the Contractor and the Owner in accordance with the Contract Documents and shall fix the time within which the Contractor shall complete or correct any incomplete or defective work."

9.9.1 In the first sentence of subparagraph 9.9.1 delete the words "when such portion is designated by separate agreement with the Contractor" and "consented to by the insurer as required under Clause 11.4.1.5. and".

9.10 Final Completion and Final Payment

Subparagraph 9.10.1, add the following new clauses:

9.10.1.1 Contractor shall submit, prior to requesting final inspection, written certification that:

- a. Work has been completed in accordance with contract documents.
- b. Project has been inspected for compliance with contract documents.

If the Architect considers the work complete in accordance with the requirements of the contract documents, the Contractor will submit his final requisition together with the following:

1. AIA G706 - Contractor's Affidavit of Payments of Debts and Claims.
2. AIA G706A - Contractor's Affidavit of Release of Liens.
3. AIA G707 - Consent of Surety to Final Payment.
4. Maintenance Guarantee.

If the Architect does not consider the work finally complete, the Contractor will be notified, in writing, with the reasons stated. The Contractor will take immediate steps to correct the stated deficiencies and then submit a second written certification to the Architect.

9.10.1.2 Reinspection Costs: Should the Architect be required to reinspect the work because of failure of the Contractor to comply with the certification listed in 9.9.1.1, the Architect will bill the Owner for all related cost incurred, such cost will be the responsibility of the Contractor and will be deducted from the Contractor's payments.

9.10.1.3 Damages shall be paid as follows: The work shall commence at the time stated in the notice to the Contractor to proceed. Notice to proceed may be given to the successful General Bidder on any date after the Bidder has executed the General Contract and furnished the General Performance and payment Bonds with all insurance herein requested and otherwise specified and/or required. The Contractor acknowledges that delay in completion of the Work by the substantial completion date resulting in delay of delivery of the facilities and site by such date in the condition specified for the Work will cause delay in use by the Owner of the school facilities and site and will cause various losses to the Owner, which may include without limitation increased administrative, engineering, construction management and construction costs. Therefore, the Contractor further acknowledges that its obligation to complete the Work by the specified date and deliver completed the work by such date is of the essence. In the event the Contractor fails to achieve substantial completion of the work by the substantial completion date, the Contractor shall pay to the Owner as liquidated damages the sum of one thousand dollars (\$1,000.00) per day for each and every day thereafter that it fails to deliver such Work completed according to the requirements of the Contract Documents. Such liquidated damages shall be paid not as a penalty, but to partially cover losses and expenses to the Owner, including intangible costs and losses that are or may be impracticable to ascertain. Allowing the Contractor to continue to finish the work (or any portion of the work) after the time specified for completion of the Work shall not operate as a waiver on the part of the Owner of any of its rights under the Contract Documents or otherwise under law or equity.

9.10.2 Replace the second sentence with the following: "If the contractor fails to furnish such releases or waivers as the owner reasonably requires to satisfy the owner that there are no outstanding liens, the owner may require the contractor, as a condition of final payment and at the contractor's expense, to furnish a bond satisfactory to the owner to indemnify the owner against any such claims."

9.10.4 Delete this subparagraph

#### 10. PROTECTION OF PERSONS AND PROPERTY

10.2.5 In line five of the first sentence of subparagraph 10.2.5 insert the word "solely" after the word "attributable". Delete the phrase "or by anyone for whose acts either of them may be liable," in lines 5 and 6, and insert the words "either in whole or in part" after "attributable in line 6."

10.2.7 After this paragraph, add the following paragraphs:

10.2.8 The Contractor shall be responsible for safety in the new construction until its occupancy by the Owner, at which time the Owner will assume the responsibility for safety of the occupied portions.

10.2.9 The Contractor shall be responsible for any of his property, fixtures, fittings, tools, equipment, etc., that may be injured or stolen either before or after installation in the building and shall make good such damage or loss at his sole cost.

10.2.10 During the progress of the work and at all times prior to the date of Substantial Completion or occupancy of the work by the owner, whichever is earlier, the contractor shall provide temporary heat, ventilation, and enclosure, adequate to permit the work to proceed in a timely fashion, and to prevent damage to completed work or work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes unless otherwise provided in the contract documents. Warranties for such systems shall be unaffected by this use, and they shall run from the date of Substantial Completion.

10.3.1 delete this subparagraph and substitute the following: "If the contractor encounters or recognizes on the



site any material known or reasonably believed to be hazardous, including but not limited to asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Contractor and the Owner shall cooperate in implementing measures to remove or contain said material and the Contractor shall comply with all directions of the Architect in the implementation of such removal or containment."

10.3.2 Delete this subparagraph in its entirety.

10.3.3 Delete this subparagraph in its entirety.

10.4 Delete this subparagraph in its entirety.

10.5 Delete this subparagraph in its entirety.

10.7 Protection of Property.

10.7.1 The Contractor shall protect roadways, sidewalks and paths within the property limits and keep them free of obstructions and snow and ice, and maintain them in a safe and satisfactory condition for the duration of the project.

10.7.2 The Contractor shall protect trees, shrubs, lawns, landscape work from damage with guards, fences or other approved methods.

10.7.3 The Contractor shall provide, erect and maintain barricades, warning signs, flags, lights as may be necessary to protect the work and safeguard the students and staff, workmen, and the general public. All such protection shall comply with the requirements of the proper authorities having jurisdiction.

10.7.4 The Contractor shall at all times during the construction period protect the excavation, trenches and buildings from damage from water caused by rain, springs, ground water, back-up of drains and sewer work which is in his contract, or from any source under his control. He shall provide and maintain pumps and other equipment, coffer dams, ditches and other protection required. He shall construct and maintain all necessary temporary drainage and do all pumping required to keep the excavation and the building areas free from water at all times.

10.7.5 If, during construction, public or private property is damaged or destroyed as a result of Contractor's neglect, the Contractor shall, at his own expense, restore such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding or replacing it, or otherwise making good such damage or destruction in an acceptable manner.

10.7.6 The Contractor shall reasonably protect his work from damage caused by vandalism and malicious mischief.

10.7.7 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

## 11. INSURANCE

### 11.1 Contractor's Liability Insurance

11.1.1 In the second line following the word "located" insert the words "and to which the owner has no reasonable objection".

11.1.3 Add the following at the end of the second sentence of subparagraph 11.1.3:

"These certificates shall set forth evidence of all coverage required by 11.1.1 and 11.1.2. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage."

Add the following new subparagraphs:

11.1.4 The insurance required by this contract shall be written for not less than the following amounts and shall be submitted on ACORD Certificate of Insurance Form 25-S (7/90) or other similar form acceptable to the Owner.

- a) Commonwealth of Massachusetts Statutory Workers' Compensation and other benefits as required under Chapter 152 of the General Laws, as amended, and section 34A of Chapter 149 of the General Laws.
- b) Employer's Liability with a limit of at least \$500,000 each accident.
- c) General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property damage) as follows:
  - 1) Bodily Injury:  
\$1,000,000 Each Occurrence  
\$3,000,000 Aggregate
  - 2) Property Damage  
\$1,000,000 Each Occurrence  
\$3,000,000 Aggregate
  - 3) Products/Completed Operations insurance shall be maintained for a minimum period of three (3) years after final payment, and the Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.
  - 4) Property Damage Liability shall include coverage for X-C-U hazards of explosion, collapse, and damage to underground property.
  - 5) Contractual Liability (Hold Harmless Coverage):  
Bodily Injury: \$1,000,000 Each Occurrence  
Property Damage: \$1,000,000 Each Occurrence  
\$3,000,000 Aggregate
  - 6) Personal Injury (with Employment Exclusion deleted, if applicable):  
\$3,000,000 Aggregate
  - 7) If the General Liability policy includes a General Aggregate, such General Aggregate shall be not less than \$3,000,000.
- d) Umbrella Excess Liability:  
Minimum of \$2,000,000 over primary insurance (\$2,000,000 each occurrence, \$2,000,000 aggregate).  
\$10,000 Retention
- e) Comprehensive Automobile Liability and Property Damage covering owned, non-owned, and hired vehicles:
  - Bodily Injury: \$1,000,000 Each Person  
\$1,000,000 Each Accident
  - Property Damage: \$1,000,000 Each Occurrence

11.1.5 Contractor's insurance shall name the Town of North Brookfield and DORE and WHITTIER, Inc., as additional insured parties.

11.1.6 Subcontracts: The General Contractor shall either (1) require each Subcontractor to procure and to maintain during the life of his Subcontract, Subcontractor's General Liability and Property Damage Insurance of same type and in same manner as specified herein, or (2) insure activities of his Subcontractors in his own policy.

11.1.7 Builders' Risk Property Coverage for the full insurable value (completed value) of the portion of the building under construction. Include "All Risk" insurance for physical loss or damage including theft. Coverage shall include the existing building starting when vacated by Owner.

11.1.8 Property Coverage for materials and supplies being transported by the contractor within 1000 feet of the premises.

- 11.3 Project Management Protective Liability Insurance.
  - 11.3.1 Replace first (8) words with "Contractor shall." Delete second sentence.
  - 11.3.3 Delete
- 11.4 Property Insurance.
  - 11.4.1 In the first line, change the word "Owner" to "Contractor."
  - 11.4.1.2 Delete
  - 11.4.1.3 Delete
  - 11.4.2 In the first line, change the word "Owner" to "Contractor."
  - 11.4.4 Delete
  - 11.4.5 Delete
  - 11.4.6 Delete
  - 11.4.7 Delete
  - 11.4.8 Delete the first sentence of subparagraph 11.4.8.
  - 11.4.9 Delete, and substitute the following: The Owner shall have the power to adjust and settle with its insurers any loss for which it has obtained insurance.
  - 11.4.10 Delete, and substitute the following: Upon the occurrence of an insured loss, the Owner and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If after such a loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.
- 11.5 Performance Bond and Labor and Material Payment Bond
  - Change 11.5.1 to read:
  - 11.5.1 The Contractor shall furnish a performance bond for the full amount of the Contract, and also a labor and materials payment bond for the full amount of the Contract, the form of which bonds are set forth in the Contract Documents, each of a surety company qualified to do business under State laws and satisfactory to the Owner, the premiums for which are to be included in the Contract Price and paid by the Contractor. These bonds shall remain in effect for the entire guarantee period for each phase of the work, which shall commence on the date of Substantial Completion, as defined in Paragraph 8.1.3.
- 12. UNCOVERING AND CORRECTION OF WORK
  - 12.2 Correction of Work
    - 12.2.1.1 Add at the end of subparagraph 12.2.1.1: The Contractor shall bear the cost of any cost, loss, or damages to the Owner resulting from such failure or defect."
    - 12.2.2.1 Delete words "unless the owner has previously given the Contractor a written acceptance of such condition." from the end of the first sentence.
      - Delete the third sentence in its entirety.
      - Add the following new subparagraphs:
    - 12.2.2.1.1 The Contractor shall deliver to the Owner, before final payment is made on the Contract, a written Maintenance Guarantee, properly sworn to and signed by a responsible officer of the Contractor's firm,

guaranteeing all work and materials included in his Contract against all defects not due to ordinary wear and use for a period of one (1) year from the date of Substantial Completion.

- 12.2.2.1.2 During the period of the guarantee, the Contractor shall be responsible for the patching and refinishing of all checks and cracks in floors, walls, or exterior walks reasonable to this type of construction and not due to normal wear and tear. Large cracks that indicate possible future movement of the structure shall have the surface material cut along a line where indicated by the Architect and trim casings shall be installed back to back to form an expansion joint, then refinished to match adjoining wall finish.

### 13. MISCELLANEOUS PROVISIONS

- 13.2.1 Replace the second sentence with the following: "Except as here in after provided, neither party to the contract shall assign the contract or sublet it as a whole without a written consent of the other nor shall the contractor assign any monies due or to become due to him hereunder, without the previous written consent of the owner. The owner may assign the contract to any institutional lender providing construction or permanent financing for the project or to any person acquiring the owner's interest in the project, and the contractor agrees to execute all consents, certificates, and other documents required by such lender or other person in connection with such assignment."

### 13.5 Tests and Inspections

- 13.5.2 After this paragraph, add the following subparagraphs:

- 13.5.2.1 All material and workmanship (if not otherwise designated by the CONTRACT DOCUMENTS) shall be subject to inspection, examination, and test by the Architect at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Architect shall have the right to reject defective material and workmanship or require its correction.

Rejected workmanship shall be satisfactorily replaced with new and proper material, and rejected material promptly removed from the premises. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship, the Owner may by contract or otherwise replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed, the Contractor and Surety being liable for any damage to the same extent as provided.

- 13.5.2.2 The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests, which shall be performed in such manner as not to unnecessarily delay the work. Special, full-size and performance tests shall be as described in the CONTRACT DOCUMENTS.

- 13.5.2.3 The Contractor shall keep the Architect informed of the progress of his work. No work shall be closed or covered until it has been duly inspected and approved. Should uninspected work be covered, the Contractor shall, at his own expense, uncover all such work so that it can be properly inspected and after such inspection, he shall properly repair and replace all work interfered with.

- 13.5.2.4 Any required laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories, or agencies approved by the Architect, and the reports of such tests shall be submitted to the Architect. The cost of the testing shall be paid for by the Contractor, unless otherwise designated in the CONTRACT DOCUMENTS.

- 13.5.4.1 Change paragraph to read as follows: "The contractor shall obtain and deliver promptly to the architect any occupancy permit and any certificates of final inspection of any part of the contractor's work for any mechanical apparatus, such as elevator, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the owner. Receipt of such permits or certificates by the architect shall be a conditions precedent to Substantial Completion of the work."

- 13.7 Delete this paragraph and 13.7.1 in their entirety.

Add new paragraph 13.8 as follows:

- 13.8 Limitation of Liability. The owner shall be liable only to the extent of its interest in the project; and no officer, director, partner, agent or employee of the owner (or any partner of a partner or agent or

employee of a partner) shall be either personally or individually liable with respect to this contract or the work. Each subcontractor shall include the foregoing limitations, which shall be effective if the owner ever succeeds to the contractor's rights and obligations under a subcontract.

### 13.9 DEFENSE OF SUITS"

- 13.9.1. The contractor shall be responsible for, shall defend and pay all costs, attorneys' fees and liabilities both direct and indirect as a result of suits arising out of this Contract.
- 13.9.2. Neither final acceptance nor occupation of the premises by the Owner shall relieve the Contractor of responsibility for all claims for labor, materials, and equipment arising out of this contract.
- 13.9.3. The Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the work.

### 14. TERMINATION OF THE CONTRACT

- 14.1 **TERMINATION BY THE CONTRACTOR.** In the first line of Subparagraph 14.1.1, change "thirty days" to read "sixty days".
  - 14.1.1.1 Delete
  - 14.1.1.2 Delete
  - 14.1.1.4 Delete
  - 14.1.2 Delete in its entirety.
  - 14.1.3 Replace 14.1.3 with the following: If one of the above reasons exists, the contractor may, upon seven additional days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for the Work executed and for all materials or equipment not incorporated in the Work, but delivered and suitable stored at the site. The payment for materials or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to the Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interest."
  - 14.1.4 Delete this subparagraph.
  - 14.2.2 Delete the phrase ", upon certification by the Architect that sufficient cause exists to justify such action," in lines 1 and 2. Delete the last sentence of item .3.
  - 14.2.2.3 Delete the second sentence of this subparagraph.
- 14.4 **Termination by the Owner for convenience.**
  - 14.4.1 Add the following: "If the contractor is adjudged a bankrupt, or if the contractor makes a general assignment for the benefit for the contractor's creditors, or if a receiver is appointed on account of the contractor's insolvency, or if the contractor consistently or repeatedly refuses or fails, excepting cases of which extension of time is appropriated, to supply enough properly skilled workmen or proper materials, or if the contractor fails to make prompt payment to the subcontractors or for materials or labor, or persistently disregards law, ordinances, rules, regulations, or orders of any public authority having jurisdiction or disregards an instruction, order or decision of the architect, or otherwise is guilty of a substantial violation of any provision of the contract, then the contractor shall be in default, and the owner may without prejudice to any other right or remedy and upon written notice to the contractor take possession of all materials, tools, appliances, equipment, construction equipment, and machinery and vehicles, offices and other facilities on the project site and all material intended for the work, wherever stored, and seven days after such notice may terminate the employment of the contract except assignment of any or all subcontractors' contracts pursuant to paragraph 5.4, and furnish the work by

whatever method the owner may deem expedient. The owner shall be entitled to collect from the contractor all direct, indirect, consequential damages suffered by the owner on behalf of the contractor's defaults, including without limitations additional services and expenses of the architect and the architect's consultants made necessary thereby. The owner shall be entitled to hold all amounts due to contractor at the date of termination until all of the owner's damages have been established, and to apply such amounts to such damages."

14.4.3 Change to read as follows:

"In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment only for work executed and to the extent approved and to the extent certified by the Architect."

END OF SECTION